

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EMIEL KANDI,

Defendant.

CASE NO. 3:22-cv-05653-RJB

ORDER ON DEFENDANT'S
MOTION FOR PROTECTIVE
ORDER

This matter comes before the Court on Defendant Emiel Kandi's Motion for Protective Order. Dkt. 43. The Court has considered the motion and remaining file and is fully advised.

On November 28, 2022, the Court granted the United States' Motion to Serve by Publication and Extend Time for Service after it attempted and failed to serve Mr. Kandi personally. Dkt. 7. Mr. Kandi answered the complaint and moved to dismiss based on insufficient service of process. Dkt. 14. He contended that the Court did not have personal jurisdiction over him because the United States published notice in the wrong newspaper. *Id.* His motion was denied without prejudice and the United States was given an opportunity to

1 perfect service. Dkt. 21. After the United States attempted several more times to personally
2 serve Mr. Kandi, its second motion to serve him by publication was granted. Dkts. 28 and 29.
3 On August 3, 2023, the United States filed a declaration asserting that Mr. Kandi was served by
4 publication for six consecutive weeks. Dkt. 32.

5 On December 4, 2023, the parties stipulated to entry of judgment in favor of the United
6 States against Mr. Kandi for income taxes, interest, and penalties in the amount of \$322,086.99,
7 plus interest, penalties and other statutory amounts accruing until the liabilities were paid in full.
8 Dkt. 33. The parties further agreed that the stipulation did not affect Mr. Kandi's right to appeal
9 the Court's denial of his motion to dismiss for insufficient service of process. *Id.* The Court
10 entered judgment as agreed by the parties on January 3, 2024. Dkts. 36 and 37.

11 Mr. Kandi filed a Notice of Appeal on February 2, 2024, in part, challenging the Court's
12 denial of his motion to dismiss for insufficient service of process/lack of personal jurisdiction.
13 Dkt. 38.

14 On September 5, 2024, Mr. Kandi filed the Motion for Protective Order. Dkt. 43. In this
15 motion, Mr. Kandi seeks an order preventing the United States from conducting a deposition that
16 was scheduled for September 19, 2024. *Id.* He again contends that this Court does not have
17 personal jurisdiction over him. *Id.* While Mr. Kandi's lawyers filed the motion, the motion
18 states that Mr. Kandi has informed the lawyers that he no longer wants them to represent him in
19 this case. *Id.* The lawyers later filed a Motion for Leave to Withdraw as Counsel, which is noted
20 for consideration on September 27, 2024. Dkt. 44. The Motion for Protective Order indicates
21 that Mr. Kandi wants to proceed *pro se*. Dkt. 43.

1 In its response, the United States argues that the Motion for Protective Order (Dkt. 43) is
2 moot because it cancelled the deposition. Dkt. 45. It further contends that it has a valid
3 judgment against Mr. Kandi and has a right to post-judgment discovery. *Id.*

4 DISCUSSION

5 “The filing of a notice of appeal is an event of jurisdictional significance – it confers
6 jurisdiction on the court of appeals and divests the district court of its control over those aspects
7 of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56,
8 58 (1982); *Schroeder v. McDonald*, 55 F.3d 454, 458 (9th Cir. 1995).

9 The Notice of Appeal and Motion for Protective Order both raise issues regarding the
10 Court’s personal jurisdiction over Mr. Kandi. This Court is divested of jurisdiction to consider
11 the motion because the motion would require the Court to consider those aspects of the case that
12 are on appeal. *Griggs* at 58. The Motion for Protective Order (Dkt. 43) should be stricken.

13 ORDER

14 It is **ORDERED** that:

- 15 • Mr. Kandi’s Motion for Protective Order (Dkt. 43) **IS STRICKEN**.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
17 to any party appearing pro se at said party’s last known address.

18 Dated this 23rd day of September, 2024.

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20 ROBERT J. BRYAN
21 United States District Judge
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